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14 Attorneys for Defendant  
15 SAFEWAY INC.

16 UNITED STATES DISTRICT COURT  
17  
18 NORTHERN DISTRICT OF CALIFORNIA

19 MICHAEL RODMAN, on behalf of himself  
20 and all others similarly situated,

21 Plaintiff,

22 v.

23 SAFEWAY INC.,

24 Defendant.

Case No. 11-03003 JST (JCS)

**JOINT STIPULATION AND ~~PROPOSED~~  
ORDER APPROVING INTERIM NOTICE  
TO CLASS MEMBERS**

1 Plaintiff Michael Rodman on behalf of himself and the certified Class (“Plaintiff”) and  
2 Defendant, Safeway Inc. (“Safeway”) stipulate as follows:

3 WHEREAS, on June 17, 2011, plaintiff in the above-captioned action, Michael Rodman,  
4 filed a class action complaint against Safeway Inc. (“Safeway”) (ECF No. 1);

5 WHEREAS, on March 10, 2014, this Court certified the following class, solely for the  
6 purpose of bringing a breach of contract claim:

7 All persons in the United States who registered to purchase  
8 groceries through Safeway.com at any time prior to November 15,  
9 2011, and made one or more purchases subject to the price markup  
10 implemented on or about April 12, 2010 (the “Class”). Excluded  
11 from the Class are Defendant, as well as all employees of the judges  
12 assigned to this action in this Court, their spouses and any minor  
13 children living in their households, and other persons within a third  
14 degree relationship to any such federal judge; and finally, the entire  
jury venire called for jury service in relation to this lawsuit. Also  
excluded from the Class are any attorneys or other employees of any  
law firms hired, retained and/or appointed by or on behalf of the  
named Plaintiffs to represent the named Plaintiffs and/or any  
proposed Class members or proposed class in this lawsuit.

15 (ECF No. 163);

16 WHEREAS, on May 13, 2014, the Court approved the parties’ proposed form and plan of  
17 distribution of the Notice of Pendency of Class Action (ECF No. 169), and such distribution was  
18 completed on or about July 21, 2014;

19 WHEREAS, the Court entered final judgment on November 30, 2015;

20 WHEREAS, Defendant has filed a notice of appeal (ECF No. 408), and execution of the  
21 judgment has been stayed (ECF NO. 416);

22 WHEREAS, Plaintiff’s counsel has received inquiries from Class members concerning the  
23 judgment and status of the case;

24 WHEREAS, the Parties have agreed to distribute an interim notice to Class Members in  
25 the form attached hereto as Exhibit A, advising Class Members as to the entry of judgment and  
26 Safeway’s pending appeal, and further advising Class Members of the means to provide updated  
27 address or contact information;

1 WHEREAS, Plaintiff's counsel has requested, and Safeway has agreed to produce, certain  
2 Class Member identifying information, specified below;

3 WHEREAS, such information shall be marked and treated as "CONFIDENTIAL" under  
4 the terms of the Stipulated Protective Order (ECF No. 57), but nothing in this Stipulation shall be  
5 construed to prevent: (1) Plaintiff from challenging such designation pursuant to the terms of the  
6 Stipulated Protective Order (ECF No. 57) at a later time, or (2) Safeway from up-designating the  
7 information at a later time to restrict access to those individuals willing to sign Exhibit B to the  
8 Stipulated Protective Order;

9 NOW, THEREFORE, the parties to the above-captioned action hereby stipulate and agree  
10 to the following:

- 11 **A. Individual Notice by Direct Electronic Mail:** The interim notice, in the  
12 form attached hereto as Exhibit A ("Interim Notice"), shall be sent by  
13 Safeway via electronic mail to the email addresses associated with each  
14 Class member in Safeway's records. The Notice shall be sent within sixty  
15 (60) days of the entry of this ~~Proposed~~ Order.  
16
- 17 **B. Individual Notice by Direct Postal Mail:** In the event an emailed Interim  
18 Notice is undeliverable to any of the email addresses associated with Class  
19 members, Safeway shall send the Interim Notice in letter format via U.S.  
20 mail, or alternatively, via postcard (in a form to be agreed upon by the  
21 parties), to the mailing address currently in Safeway's records. Such  
22 Interim Notice by postcard or letter, if any, shall be sent no later than thirty  
23 (30) days after completion of the email notice process set forth above.  
24 Plaintiff shall advance the cost of postage and printing associated with such  
25 direct postal mail Interim Notice, but shall not be precluded from seeking  
26  
27  
28

reimbursement of such costs by Safeway as a taxable cost after resolution of the appeal. Safeway reserves its rights to oppose such reimbursement.

C. **Website:** The Interim Notice shall also be posted on the website [www.SafewayGroceryDeliveryClassAction.com](http://www.SafewayGroceryDeliveryClassAction.com), along with the Judgment, the Court's Orders on Motions for Summary Judgment, the long-form Notice of Pendency of Class Action, the Court's Class Certification Order, Plaintiff's Amended Complaint, Safeway's Answer, and, to the extent relevant, future orders of the Court or other documents important to Class members. The updates to the website shall occur within thirty (30) days of the entry of this ~~Proposed~~ Order.

**D. Class Member Information to Be Provided to Plaintiff's Counsel**

Safeway shall provide to Plaintiff's counsel a list of all Class Members, along with such Class members' customer identification number, card number, physical address, email, and phone number (if available) and also the aggregate markup amount charged to each Class Member as reported in the Query Run as calculated by Safeway's expert, Mr. Anastasi, in his rebuttal report (ECF No. 275-6). Such information shall be provided within sixty (60) days of the entry of this ~~Proposed~~ Order.

IT IS SO STIPULATED.

Dated: February 17, 2016

Dated: February 17, 2016

REED SMITH LLP

CHIMICLES & TIKELLIS LLP

By: /s/ Jonah D. Mitchell  
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 Jonah D. Mitchell (SBN 203511)  
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6 Attorneys for Plaintiff  
7 MICHAEL RODMAN and the Class

8 *\* Filer's Attestation: Pursuant to Civil*  
9 *Local Rule 5-1(i) regarding signatures,*  
10 *Timothy N. Mathews hereby attests that*  
11 *concurrence in the filing of this*  
12 *document has been obtained.*

13 IT IS SO ORDERED.  
14 Date: February 18, 2016

